



**FINAL**

DHS Child Welfare Advisory Committee

**Legislative Subcommittee**

April 28, 2006

Attending: Karen Andall, Michael Kurtz for Mickey Lansing, Angela Sherbo by phone, Judy Stiegler, Timothy Travis for Nancy Miller

DHS Staff: Ramona Foley, Mickey Serice, Caroline Burnell, Pam Pearson, Nancy Keeling, Una Swanson, Irvin Minten, Jan Slick, Kevin George

## **PURPOSE**

- Stiegler: Her vision for the Legislative Subcommittee is to use it as a sounding board for legislative concepts and budget proposals agencies are taking forward. It will serve as a clearinghouse to decide which concepts and topics need CWAC input.
- Foley: There is also work done on concepts outside CWAC such as the wordsmithing of the draft ORS language. Asked if Judy sees the subcommittee editing draft language.
- Serice: DHS would not use the subcommittee for that purpose. Work groups outside CWAC will be set up by the program managers to work the concepts. In the past this subcommittee exchanged information about concepts, legislation and budget issues that affected child welfare. Noted that this is the first time DHS is introducing child welfare legislative concepts during Ramona's tenure as assistant director, which began in August 1999.
- Stiegler: The subcommittee will not be used to wordsmith. We need to work at the conceptual level, evaluating the impact on the system and individual components of the system.
- Kurtz: This allows agencies to be supportive of each other by knowing up front what they are introducing and why.
- Andall: Partner agencies can see if there will be issues early in the process. It is better to know sooner than later.
- Stiegler: The wordsmithing is the job of Legislative Counsel.

## **LEGISLATIVE CONCEPTS**

### ***OCCF – Michael Kurtz:***

OCCF is not pre-session filing any concepts. If they have new initiatives, they will come through as Policy Option Packages (POP). They may have one POP on

services for runaway and homeless youth that will be closely tied with the recommendations of the HB 2202 work group.

***OYA – Karen Andall***

They have four possible legislative concepts:

- OYA statutory language technical correction: Housekeeping concept that corrects statutes where applicable in ORS 419C, 420 and 420A to accurately reflect the intent of law regarding youth offenders and DOC offenders in OYA custody resulting from the creation of the OYA.
- Workers' Compensation Insurance for DOC offenders transferred to OYA custody: Housekeeping concept that clarifies language to ensure workers' compensation coverage is provided for all offenders in OYA custody, whether they are adult (DOC) offenders or youth offenders adjudicated by juvenile courts.
- OYA mental health transfers – technical language clean up: Housekeeping concept that provides for the repeal of ORS 419.500 to bring statute into compliance with HB 2141 (2005-07) and codified in ORS 179.473 – related to transfer of OYA offenders to mental health facilities.
- Adoption of new Interstate Compact for Juveniles for Oregon and OYA: Placeholder only. Provides for codification and implementation of the Interstate Compact for Juveniles for Oregon. A POP will be submitted if it has the potential to be ratified. A minimum of 35 states have to ratify it in order for it to become effective. There are currently 28-29 states who have accepted it, but some are wanting to pull out. This concept differs from CAF's legislative concept on ICPC. Ramona Foley explained CAF's placeholder ICPC. The Interstate Compact for the Placement of Children borrowed the Interstate Compact on Juveniles idea to acquire a pool of money for a secretariat function. It would charge states a fee to join the Compact. Most states have not been able to agree to pay this fee for a service that has been provided for free in the past.

OYA is also researching whether single gender services for women can be provided without a POP.

Karen handed out a meeting announcement for their budget forum on May 16. Information can be submitted to Karen by email if interested subcommittee members are unable to attend.

### ***CRB and the Courts – Timothy Travis***

They may have some POPs, but they will not be related to child welfare.

### ***DHS – Mickey Serice***

In addition to the concepts DHS will introduce, this subcommittee will be discussing other agencies' concepts. We expect Rep. Dalto and the House Interim Task Force on Child Welfare to introduce some child welfare legislation. We also anticipate Rep. Krieger and other legislators may introduce legislation as a result of their participation in a recent DHS Sensitive Review Committee, which will likely be on adoptions and placements of children. Mickey Serice has not seen any concepts from these legislators at this time.

- Keeling: Concepts may also come from the Court of Appeals Work Group.
- Foley: The Sensitive Review Committee was formed out of concerns about a specific case in which a grandmother wanted to be a placement resource. The CASA recommended that placement, but DHS did not concur with that recommendation. Though the original allegation that DHS placed the child with a relative of the caseworker was not true, other issues began to unfold. The Sensitive Review Committee is allowed by the confidentiality statute. The review is completed and we anticipate legislative bills to be introduced by the legislators who served on the review committee.
- Serice: Only the draft concepts related to child welfare were sent to CWAC and the Legislative Subcommittee.

The discussion proceeded on to each draft concept:

#### **CAF-03: Front End Custody.**

- Serice: This concept has two parts that are separate issues but fall under the same title. Linda Guss suggested Part 2 to clarify current statute on DHS authority at the time of an emergency placement.
- Slick: She has asked other states for their statutory language, but has not received a response.
- Foley: Part 1 seeks a way to have the court order a family to get services without DHS taking custody. Some judges believe current law provides that authority.

- Travis: A court cannot order services until there is jurisdiction – until either the perpetrator admits or the charges are proven. Once jurisdiction is established and the child is a ward of the court, the court can order a parent to get services.
- Slick: The concern is when DHS does not have custody, it is not a party to the case and cannot report back to the court.
- Swanson: A challenge is when DHS has custody but the child remains in the home. The agency has little control over the situation.
- Travis: The court can order services whether or not DHS has custody. However, he has heard workers say DHS cannot provide services unless it has custody.
- Stiegler: Why does the dispensing of services and working with parents hinge on whether or not DHS has custody?
- Keeling: This may come from the time when courts ordered the agency to provide services for families for whom it had no referrals.
- Slick: The *National Resource Center for Child Protective Services Report* included a concern about an inability to monitor these cases. Example: A CPS assessment reveals concerns for child safety, the family will not volunteer for services, we petition the court, the court establishes jurisdiction, we are providing services and monitoring for parental changes; however, the agency is not a party to the case and unable to report to the court.
- Keeling: The NRCCPS report also asked if abuse is so severe we petition to the court, why would we leave the child in the home.
- Foley: The goal is to find a less intrusive way to provide the services than with DHS custody.
- Andall: In the juvenile delinquency system, the court has jurisdiction over the youth whether on probation or in OYA custody. The court can also establish jurisdiction over the parent if certain criteria are met. A separate petition is filed holding the parent accountable. The court outlines how the case is monitored. The juvenile department does not have to have custody.
- Foley: There have been child fatalities in situations where DHS had custody but were told to keep the child in the home. It gives the illusion that the agency is monitoring the case on a daily basis.
- Sherbo: If there is a substantiated concern and the court determines the child would be safe at home with certain precautions, DHS should be a party. We need to determine if we are lulled into a false sense of security.
- Foley: The work group for this concept will work on the semantics and technicalities including pre-shelter hearings, party status and types of custody.

Other states have resolved these concerns and we are waiting to hear from them.

- Andall: Cautioned that we not lose the ability for DHS and OYA to work on cases together when OYA has legal custody and DHS provides some services.
- Travis: The first sentence in the Purpose statement for Part 1 is concerning to him. If a child is unsafe, why is the child staying in the home? Also, the language in the second paragraph in the Description statement is not from ORS 418.005. The ORS cross reference needs to be corrected. Mentioned that previous attempts to define temporary, legal and physical custody in the definition statutes have failed.
- Stiegler: That is because it would narrow DHS' jurisdiction.
- Foley: We will forward Timothy's suggestion to define the types of custody to the Department of Justice.
- Travis: Relayed a concern from Judge Waller about the possible impact on least restrictive. He also pointed out how the use of giving legal custody to the agency gets the parents' attention.
- Foley: The least restrictive placement is in the home without DHS custody. Using legal custody as the first hammer could cause a judge to question our reasonable efforts.
- Travis: An unintended consequence may be that more children will be placed in foster care.

#### CAF-05: Caseworker Authority to Remove

- Stiegler: Concerned about (c) in the Description statement, that one of the criteria allowing a DHS employee to take a child into protective custody is, "The child's physical custodian does not object to the child being taken into protective custody by the employee." If the issue is worker safety, it needs to be clearer.
- Foley: The *NRCCPS Report* and the Sensitive Review Committee both had concerns about a worker having this authority to remove without law enforcement and court orders. It gets back to due process. This concept makes it the exception that a worker could remove a child only when LEA is not available and the other factors exist.
- Travis: As written, expert advice has said to leave a child in immediate danger if a parent objects to the removal and LEA is not present.
- Swanson: We are saying that when children are in immediate danger, our response will be to get LEA on the scene, not that we will walk away.
- Stiegler: It needs to be reworded.

- Foley: It is to limit the role of the worker in removals.
- Travis: The concept says it has no fiscal; however, it needs to be changed to show there is an unfunded mandate on local governments because it will add a workload to LEA.
- Keeling: A large part of the state never removes a child without LEA. This is not a new idea.

#### CAF-06: Threat of Harm

- Serice: This concept is very draft. “Threat of harm” is defined in the reporting law. The intent is to change the definition of abuse to include conditions or circumstances that create substantial risk of harm rather than having threat of harm as a separate category.

#### CAF-09: Post Placement Supervision

- Serice: We hope to look at the statute and make it clear that when a child is returned home, there is a fixed period of time for post placement supervision. The court would be allowed to make exceptions to the fixed period of time to have the oversight continue longer.
- Foley: There is an expectation that when a child is returned home, we are comfortable with the parent getting custody back at some point.
- Stiegler: Cautioned that this must not impact the court’s ability to maintain jurisdiction.
- Foley: Agreed. Other states have varying periods of time for this post placement supervision.
- Sherbo: The Purpose statement talks about two different things.
- Travis: The statement in “Known Opposition” that the CRB currently advocates to review cases even if the child returns home goes against the policy of the Judicial Department.

#### CAF-13: Pre-notification Criminal Background Checks

- Serice: This was omitted when DHS first got the authority to run its own LEDS checks. This would allow caseworkers to check criminal histories of adults in a home without their permission if there is a CPS assessment happening.

#### CAF-14: Placeholder for Interstate Compact for the Placement of Children

- Serice: This concept will be needed if 35 or more states pass the re-write of the ICPC. It will have a fiscal.

### CAF-15: Placeholder for Criminal History Opt-Out

- Serice: The federal government is considering legislation to not allow states to opt out of the ASFA criminal background check requirements.
- Foley: In an earlier conversation, Nancy Miller shared her concerns about this possible federal legislation. Some members of Congress believe that states that opt out of this requirement are not considering child safety; this is not true. About twelve states have this opt out, but most, Like Oregon, conduct the background checks.
- Serice: We won't move forward with this placeholder if the federal legislation does not pass.

If you are interested in being on a work group for a legislative concept, contact Pam Pearson. As the Governor approves the concepts, the work groups will be formed. CAF-05 is the only one the Governor has approved at this time.

- Travis: Asked why there was no concept regarding present ability to parent.
- Serice: We are focusing our concepts on safety of the child and the NRCCPS recommendations.
- Foley: We had other draft concepts on adoptions that we did not move forward. They did not meet the child safety theme. Another entity may introduce them.
- Travis: The termination of parental rights (TPR) must show that the parent is presently unfit. Gave an example when a father comes into a case late and expresses interest in the child. In a TPR, the State has an obligation to show he is not a fit parent. The dad is not required to show an ability to parent.
- Foley: Understood the issue to be when the parent's situation has changed between the time the TPR was done and the appeal.
- Sherbo: JRP is on both sides of this issue. JRP is interested in anything the Court of Appeals Work Group and other work groups are doing.

### ***Juvenile Rights Project***

- Sherbo: JRP is working on some concepts and will share them when they are ready.

## **FUTURE MEETINGS**

- Stiegler: Future Legislative Subcommittee meetings will be scheduled with input from members. They will not be on Friday afternoons. We will select some dates in June and choose the date that works best for most members.
- Serice: The legislative concept work groups will be done by the end of September. In June, we will know which concepts will be moving forward. We will send a matrix of the work groups so CWAC members can let Pam Pearson know which ones they are interested in.

Meeting adjourned.